

JOINT USE AND MAINTENANCE AGREEMENT

THIS JOINT USE AND MAINTENANCE AGREEMENT (“Agreement”), is made and entered into this ____ day of _____, 2019, (the “Effective Date”) by and between the CITY OF CHULA VISTA, a chartered municipal corporation (the “City”), the SAN DIEGO METROPOLITAN TRANSIT SYSTEM, a State of California public agency (“MTS”), and the SAN DIEGO ASSOCIATION OF GOVERNMENTS, a political subdivision of the State of California (“SANDAG”), each of which may be referred to individually as a “Party” or collectively as the “Parties”, with reference to the following facts:

RECITALS

- A. Pursuant to Public Utilities Code section 132350, et seq., SANDAG is charged with responsibility for planning and constructing regional transit projects in San Diego County;
- B. Through an Ordinance adopted by SANDAG and approved by the voters, SANDAG oversees a sales and use tax in San Diego County dedicated to various transportation improvement projects (*TransNet*), including various transit projects in Chula Vista. The *TransNet* tax is currently effective through March 31, 2048;
- C. Pursuant to Public Utilities Code sections 120000, et seq., MTS is the public transit operator in ten San Diego county cities and adjacent unincorporated areas, including Chula Vista;
- D. As of the Effective Date, SANDAG will have substantially constructed the South Bay Rapid project (Project) using *TransNet* funds;
- E. The Project is a bus rapid transit route including an exclusive two-lane guideway and transit stations that runs from downtown San Diego to I-805 then along East Palomar Street, over SR-125, around Otay Ranch Town Center Mall to Millenia then onto Birch Road, and onto SR-125 to the Otay Mesa Transit Center in the southwest quadrant of the SR-905/Siempre Viva Road Interchange;
- F. The Project will provide *Rapid* service for those commuting between downtown San Diego and the Otay Mesa Border Crossing and is of regional importance to MTS, Chula Vista, SANDAG, and the public, and is more particular described in an operating agreement between MTS and SANDAG (MTS Doc. No. G1673.0-14.4.1; SANDAG Doc No. 5004387 SOW 4 AM 1);
- G. The City owns, controls and currently maintains certain lands and property for public road and related purposes along East Palomar Street, Eastlake Parkway, Birch Road and future local street network;
- H. Pursuant to Public Utilities Code section 120244, MTS is entitled to the benefit of any right Chula Vista has to construct or maintain roads, highways, or any other crossings over any public or private lands;

I. SANDAG, as part of the Project, has constructed various improvements, including an exclusive Guideway, bridge overcrossing at SR-125, signaling equipment, telecommunications systems, traffic signals, and traffic signal modifications, signage, striping, markings, storm water facilities, stations, and appurtenances over portions of local streets, guideway easements, roads, and City-owned right-of-way; (“City Right-of-Way”);

J. Upon completion of construction of transit projects in MTS’s jurisdiction, SANDAG transfers title of Project-related infrastructure and real property to MTS for ownership, maintenance and operation;

K. Once operation of the Project commences, SANDAG will continue to fund Project maintenance and operations as allowed by the TransNet ordinance; and

L. This Agreement is intended to delineate the duties and responsibilities of SANDAG, MTS, and Chula Vista as it relates to the portions of the Project within the boundaries of Chula Vista, more particularly described as to the area designated in the “MAINTENANCE AGREEMENT MAP” (Exhibit “A”), hereinafter referred to as the “JOINT MAINTENANCE AREA.”

AGREEMENT

NOW THEREFORE, in accordance with the mutual benefits contained in the aforementioned Recitals and in consideration thereof, SANDAG, MTS, and City agree as follows:

DEFINITIONS:

A. DEFINITIONS. The below definitions apply whether the word is capitalized or in lower case.

“BRT” means Bus Rapid Transit.

“BRT FACILITY” includes, but is not limited to, BRT GUIDEWAY, striping, signage, stations, curb and gutter, drainage inlets and other storm water facilities for the benefit of the BRT GUIDEWAY or BRT station, trash receptacles, shelters, benches, handrails, safety glass walls, stairways, and any other accessory objects as shown in Exhibit “A.”

“BRT GUIDEWAY” or “DEDICATED GUIDEWAY” means (for the purposes of this project) a dedicated “BRT buses only” corridor within the median of East Palomar Road, from Oleander Avenue to Magdalena Avenue, and an independent corridor from Magdalena Avenue to Birch Road. The DEDICATED GUIDEWAY generally includes the paved area designated for bus only use and the curb and gutter on each side, unless otherwise noted on Exhibit A.

“City Right-of-Way” means (for the purpose of this project) city owned or controlled land including, but not limited to, the public streets, curb and gutter, sidewalk, and planting strips.

“JOINT MAINTENANCE AREA” means the area bounded in the attached “MAINTENANCE AGREEMENT MAP” (Exhibit “A”).

“Maintain” ~~and “maintain”~~ means the performance of “maintenance” as defined in Section 27 of the California Streets and Highway Code, and shall include but not be limited to performing all necessary Repairs and Replacements of any structure, safety convenience or device, planting, illumination equipment, or facility.

“Rapid” (formerly known as Bus Rapid Transit) is a flexible, high performance transit mode that uses buses or special rubber tire-based vehicles operating on pavement, and that combines a variety of physical, operating and system elements into a permanently integrated system with a quality image and unique identity. TSP and DEDICATED GUIDEWAY operations are intended to improve the quality of Rapid.

“Repair” means the necessary activities, by the party charged with maintenance, to correct problems with an existing installation/facility that is deemed inoperable by the owner/operator.

“Replacement” means the action or process of replacing something (in kind) when an owner/operator cannot correct a problem with an existing facility and it is deemed inoperable. The party charged with maintenance of the facility shall replace that existing facility with another of the same size and capacity.

“Signalized Intersections” means traffic control equipment used for the operation of traffic intersections with signals including, but not limited to detectors, poles, signal indications, conduits, wiring, controllers, cabinets, safety lights, signage, markings, striping, and TSP-related equipment (where applicable) including phase selectors, detector loops, optical receivers, and special BRT signs, phase selectors, detector loops, optical receivers, special signs, and markings.

“TSP” means Transit Signal Priority. TSP is an operational strategy that primarily facilitates the movement of transit vehicles (usually those in-service), such as buses, through traffic-signal controlled intersections. Objectives of TSP include improved schedule adherence and improved transit travel time consistency while minimizing impacts to normal traffic operations.

B. CITY AGREES:

1. To maintain each of the City’s streets, public access easements, landscape maintenance districts and roads within the JOINT MAINTENANCE AREA, except those areas, improvements, and facilities designated to be maintained by MTS in this Agreement.

2. To use reasonable efforts to maintain the areas, improvements, and facilities within City Right-of-Way designated to be maintained by the City in this Agreement in such manner as to not unreasonably interfere with the operation of the BRT GUIDEWAY.
3. To notify MTS of City access into BRT GUIDEWAY for any maintenance that is the obligation of City under this Agreement.
4. Upon approval of an encroachment permit for the BRT FACILITY, to grant access to the JOINT MAINTENANCE AREA to MTS for the purpose of maintenance of the BRT FACILITY.
5. To maintain all Signalized Intersections identified on Exhibit "B", which is attached hereto and incorporated herein, subject to reimbursement for maintenance of "new" intersections by MTS or SANDAG as provided herein.
6. To maintain TSP-related equipment at "existing" Signalized Intersections as identified on Exhibit "B".
7. To perform routine maintenance, per Exhibit "D," on *Rapid* route traffic control systems identified on Exhibit "B".
8. To process payment for all electrical energy billings ("existing" and "new") for Signalized Intersections listed on Exhibit "B".

9. To retain responsibility for all storm water compliance for the storm water facilities under the City's Phase I MS4 Permit (NPDES General Permit No. CAS000004 and any successor permit) ("MS4 Permit") with the San Diego Regional Water Quality Control Board ("RWQCB"). Notwithstanding the maintenance responsibilities undertaken by MTS in Section C(14)(e), nothing in this Agreement is intended to (i) transfer City's MS4 Permit responsibility to MTS, or (ii) transfer liability to MTS for a non-MTS originated discharge into any of the storm water facilities identified in Exhibit "A". City acknowledges that the division of responsibility in this Agreement is simply intended to document the facilities constructed as part of the Project, entitling City to cost reimbursement or MTS maintenance obligations. MTS shall be entitled to all rights and defenses available under the law related to a regulatory or enforcement matter, if any, that arise in connection with the Project-related storm water improvements identified in Exhibit "A". In the event a RWQCB regulatory or enforcement matter relates to the facilities designated in Section C(14)(e), then MTS and City will work in good faith to respond to, remediate, and/or cure the alleged violation. If a RWQCB fine related to Section C(14)(e) is imposed and becomes final, then MTS and SANDAG shall be responsible for such costs to the extent the fine relates to a MTS discharge or MTS responsibility under this Agreement. City agrees that City shall not issue independent City fines to MTS for storm water facilities covered by this Agreement.

9.10. If MTS fails to maintain the BRT FACILITY as provided by this Agreement to the satisfaction of the City, City agrees to provide MTS with written notice of the same.

~~40.11.~~ If City determines any part or portion of the BRT FACILITY to be an imminent threat to health or safety of persons or property, City agrees to provide MTS with notice of the same.

~~41.12.~~ The City of Chula Vista point of contact for this Agreement shall be:

William S. Valle
Director/City Engineer
Department of Engineering & Capital Projects
City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910
(619) 409-5976

C. MTS AGREES:

~~42.13.~~ To submit to City a one-time, no-cost encroachment permit application to perform maintenance as required by this Agreement. In conjunction with performing work in the City Right-of-Way, MTS acknowledges it may be required to enter into future cooperative agreements with the City to define the cost and responsibilities for the City's project support services, including but not limited to design development reviews, construction inspection, and/or oversight, related to any present or future improvements, protection, modification, replacement, removal, or relocation of the BRT FACILITY performed by MTS or their respective agents.

~~43.14.~~ To maintain, protect, relocate, and reconstruct the BRT FACILITY and all other areas and locations identified as MTS' responsibility on Exhibit "A", which is attached hereto and incorporated herein, in a clean, safe, and functioning condition. MTS' maintenance obligations for the BRT FACILITY include, but are not limited to:

- a. performing all Maintenance, inspection, emergency Repair, Replacement, and hazardous material cleanup in the MTS maintenance areas shown on Exhibit "A";
- b. performing all work necessary to keep the BRT FACILITY in a clean and safe condition;
- c. repainting pavement markings related to use for transit purposes and replacing pavement markers, as necessary;
- d. cleaning and painting to keep all walls, structures, columns, objects, and other surfaces free of debris, dirt, and graffiti;
- e. subject to the reservation of RWQCB regulatory responsibility set forth in Section B, Paragraph 9, maintaining in a clean, safe, and functioning condition all storm water or drainage facilities for the benefit or control of the *Rapid* route including but not limited to, all modular wetland systems, underground detention vaults, median detention swales, underground infiltration units, bioretention basins, modular underground tank systems, CDS units, inlet filters in the MTS maintenance areas shown on Exhibit "A"; MTS agrees to work in good faith with City to respond to, remediate, and/or cure any RWQCB regulatory or enforcement matters that relate to the designated facilities;

f. watering, trimming, weeding, and controlling of planting and landscaping within the MTS maintenance areas shown in Exhibit "A", as necessary; and

g. maintaining in a clean, safe, and functioning condition all utilities, structures, power installations, lighting, fences, signs, gates, and specific signaling equipment ~~or identified in Exhibit "A" and not~~ maintained; and by City pursuant to Section B.

h. maintaining in a clean, safe, and functioning condition the bridge overcrossing at SR-125 in its entirety, with the exception of the traffic signal controller, traffic signal cabinet, and any TSP systems on the new traffic signal on the bridge; ~~and.~~

i. maintaining in a clean, safe, and functioning condition ~~the underside of all structures associated with~~ the bridge overcrossing adjacent and west of SR-125 to Magdalena Avenue that is in the City Right-of-Way.

~~14.~~ 15. To perform its obligations under this Agreement in such manner as to not unreasonably interfere with the operation, use, or safety of the City Right-of-Way.

~~15. — To perform its obligations under this Agreement in accordance with City's publicly available policies and MTS policies, procedures, practices, standards, specifications, and regulations.~~

16. To be responsible for all maintenance costs for "new" Signalized Intersections as identified on Exhibit "B" and reimburse the City for all electrical energy payments for all "new" Signalized Intersections as identified on Exhibit "B". City agrees to transmit payments to the electric utility provider on behalf of MTS for electrical energy billings for "new" Signalized Intersections. MTS agrees to reimburse City for all payments for billings for "new" Signalized Intersections in accordance this Agreement. Upon receipt of an electrical energy billing for "new" Signalized Intersections, City will invoice MTS for the full amount of the billing and MTS shall remit payment for such billing to City within thirty (30) calendar days of receipt of that invoice.

17. To apply for and cause its contractors at every tier to apply for all encroachment and other ~~necessary~~ applicable permits authorizing entry into the JOINT MAINTENANCE AREA including but not limited to for purposes of inspection, maintenance, repair, protection, replacement, removal, construction, or reconstruction of the BRT FACILITY prior to entry or commencement of such work. MTS will submit individual encroachment and other necessary permit applications (e.g., traffic control) for any substantive repair activities and obtain all encroachment and other necessary permits prior to the start of any non-maintenance work within the BRT FACILITY.

18. To give thirty (30) days advance notice to the City before performing any work on the BRT FACILITY except for routine maintenance performed in MTS's operations area and consistent with Paragraphs 4 and 13, or for emergency repairs. MTS agrees to provide City with access to the BRT FACILITY as necessary for City's inspection or approval.

19. Not to perform work on the traveled way or shoulders of the City's roadways located within the City Right-of-Way, without prior written consent by the City.

20. Not to modify, alter, replace, remove, or relocate any of the BRT FACILITY within the City Right-of-Way without prior written consent by the City, which consent shall not

be unreasonably withheld, conditioned, or delayed. This provision is intended to provide for advance consultation with City on various improvements that might adversely impact adjacent portions of the City Right-of-Way, including but not limited to adverse impacts on vehicular and pedestrian site lines, impairment of adjacent street lights or other systems designed to maintain public safety and protect public property from damage. This provision shall not require City notice or consent for routine maintenance at the BRT station platform areas, such as repair or replacement of lighting, shelters, benches, notices, ticket vending machines.

21. To take all steps necessary to protect and keep free from damage all facilities and structures within the City Right-of-Way, including, but not limited to, foundations, bridges, signs, lighting, columns, and landscaping over, under, above, or adjacent to the JOINT MAINTENANCE AREA. Any damage to City Right-of-Way facilities and structures in the JOINT MAINTENANCE AREA due to MTS' actions or omissions shall be repaired or replaced by MTS within ten (10) days, or as soon thereafter as practicable, at MTS' sole expense. MTS shall immediately cease all activities giving rise to such damage and shall modify their operations so as to prevent any further such damage. If MTS does not complete repairs or replacements within that time period, the City may but is not obligated to proceed to perform such repairs or replacements and MTS shall reimburse City for all costs incurred for such repairs or replacements.

22. Not to erect any kind of sign that is not necessary for the operation of MTS' BRT GUIDEWAY within the JOINT MAINTENANCE AREA. All signs necessary for the operation of MTS' BRT ~~GUIDWAY~~GUIDEWAY within the JOINT MAINTENANCE AREA must not interfere with the operation, use, or safety of the City Right-of-Way. No signs shall be attached to or painted on the City's facilities or structures except with the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed.

23. Not to locate any lights on or adjacent to the JOINT MAINTENANCE AREA which would interfere with the operation, use, or safety of the City Right-of-Way.

24. Following construction of the BRT FACILITY, except for a transfer or assignment to SANDAG, no transfer or assignment of MTS' primary responsibility for the design, construction, operation, maintenance, improvements, modification, protection, replacement, removal, or relocation of the BRT FACILITY shall be made to any third party without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. Such consent shall not be unreasonably withheld, conditioned, or delayed. All successors-in-interest to MTS will be required to comply with the terms of this Agreement and any operation, maintenance, improvements, modification, protection, replacement, removal, and relocation restrictions issued by the City.

25. Upon receipt of notice from City pursuant to Paragraph 910 above, MTS shall cure any failure to maintain identified by the City by no later than thirty (30) calendar days from the date of City's notice, or as soon as practicable thereafter. If MTS does not timely cure such failure to maintain, City may but is not obligated to (a) perform such maintenance on behalf of MTS at MTS' sole expense or (b) remove the BRT FACILITY, in whole or in

part, and restore the City Right-of-Way to a safe and operable condition at MTS' sole expense. Failure of the City to provide notice under Paragraph ~~9~~10 does not relieve MTS of any of its obligations under this Agreement.

26. Upon receipt of notice from City as provided in Paragraph ~~10~~11 above, MTS shall correct the imminent threats to health or safety identified by the City by no later than twenty-four (24) hours after receipt of the notice, or as soon as practicable thereafter. If MTS determines that it will be unable to correct an imminent threat to health or safety within twenty-four (24) hours, it shall immediately secure the affected area in as safe of a condition as practicably possible and immediately notify the City of the same. If MTS fails to timely correct an imminent threat to health or safety, City may but is not obligated to make efforts to correct the imminent threat at MTS' sole expense. Failure of the City to provide notice under Paragraph ~~10~~11 does not relieve MTS of any of its obligations under this Agreement.

27. To notify City in writing of any areas requiring maintenance that is the obligation of City under this Agreement.

28. To acknowledge City's title and superior rights to the City Right-of-Way and real property covered by this Agreement, subject to MTS' rights under Public Utilities Code section 120244.

29. The MTS point of contact for this Agreement shall be:

Michael B. Daney
Manager of Contract Operations and Passenger Facilities
San Diego Metropolitan Transit System
1255 Imperial Ave., Suite 1000
San Diego, CA 92101-7490
(619) 595-4903

D. SANDAG AGREES:

30. To reimburse MTS and the City for the maintenance obligations set forth herein to the extent allowed by the *TransNet* Extension Ordinance and Expenditure Plan. In the event *TransNet* funding is no longer available to fund these obligations, through exhaustion of the allocated *TransNet* funds and/or expiration of the *TransNet* Extension Ordinance, SANDAG and MTS agree to work in good faith and use best efforts to identify an alternative funding source sufficiently in advance of the exhaustion or expiration of the allocated *TransNet* funds so as to ensure compliance with the obligations set forth in this Agreement.

31. To reimburse the City (through MTS or directly) for the maintenance of traffic control equipment and utility costs (Exhibit "B"), signs, markings that are directly attributed to the operation of the BRT service and/or "new" signalized intersections.

32. To reimburse City (through MTS or directly) for all costs associated with maintenance performed pursuant to Paragraphs 6 and 7 of this Agreement. In addition,

SANDAG will reimburse the City for any additional routine maintenance checks outside of its standard annual routine maintenance check. City shall bill SANDAG for such costs on quarterly basis unless otherwise agreed to in writing by the Parties.

33. To reimburse City (through MTS or directly) for all costs associated with maintenance or correction work performed pursuant to Paragraphs 25 and 26 of this Agreement. City shall bill SANDAG for such costs within a reasonable period after such maintenance or correction work is completed.

34. SANDAG point of contact during construction of the BRT FACILITY:

Omar Atayee
SANDAG
401 B Street, Suite 800
San Diego, CA 92101
(619) 595-5319

35. SANDAG point of contact after construction of the BRT FACILITY is complete:

Kim Kawada
SANDAG
401 B Street, Suite 800
San Diego, CA 92101
(619) 699-1990

E. IT IS MUTUALLY AGREED THAT:

36. MTS shall have the right to terminate this Agreement by providing twelve (12) months prior written notice ("Termination Notice") to the City and SANDAG. MTS shall include a proposed effective date for termination ("Termination Date") within the Termination Notice, which shall be no earlier than twelve (12) months after the date of service of the Termination Notice upon City and SANDAG.

Upon receipt of a Termination Notice, City shall have the option, in City's sole discretion, to require MTS to remove all or designated portions of the BRT FACILITY within the City Right-of-Way and restore the City Right-of-Way to a condition reasonably acceptable to City, at MTS' sole expense ("~~Option for MTS Removal to Remove and Restoration~~"). ~~MTS shall reserve the Restore~~"), subject to MTS' right to seek reimbursement for any removal or restoration costs it incurs pursuant to the Option for MTS Removal and Restoration from SANDAG under *TransNet* or alternate funding sources. City shall have twelve (12) months from receipt of a Termination Notice to exercise its Option for MTS Removal to Remove and Restoration Restore. If City fails to timely exercise its Option for MTS Removal to Remove and Restoration Restore as to any or all of the BRT FACILITY, the ownership in such portions for which City has not timely exercised its Option for MTS Removal to Remove and Restoration Restore shall transfer to City upon the later of: (i) the date that MTS permanently ceases operation of the BRT FACILITY, or (ii) twelve (12) months after City's receipt of the Termination Notice.

Notwithstanding the Termination Date, MTS shall continue to secure and maintain the BRT FACILITY in a clean and safe condition until the latest of the following: (i) the Termination Date, (ii) the date of transfer of all or designated portions of the BRT FACILITY pursuant to City's failure to timely exercise its Option ~~for MTS Removal~~ to Remove and ~~Restoration~~ Restore, or (iii) the date that MTS has removed all or designated portions of the BRT FACILITY, and restored the associated City Right-of-Way to a condition reasonably acceptable to City, in accordance with City's Option ~~for MTS Removal~~ to Remove and ~~Restoration~~ Restore.

Upon service of a Termination Notice, MTS and SANDAG agree to work in good faith and use best efforts to identify an alternative funding source sufficiently in advance of the exhaustion or expiration of the allocated *TransNet* funds so as to ensure compliance with the obligations set forth in this Agreement as provided in Paragraph 30 of this Agreement.

37. An individual BRT FACILITY may be added or removed from this Agreement by mutual written agreement of the Parties and by updating Exhibit "A" or Exhibit "B" in this Agreement. Prior to the implementation of the new component or proposed revision, the Party proposing the change should submit a request of its intention to the other Party to this Agreement for review and comment. The party shall take action to respond to the request within 30 days unless otherwise agreed to by the affected Parties.

38. MTS and Chula Vista shall maintain the areas within their responsibility to maintain the facility or area in a reasonably good, clean and working condition. All facilities shall be maintained in a manner as to promote public safety and to comply with applicable laws and regulations. All work shall be performed in accordance with the standard of care ordinarily exercised by members of the profession currently practicing under similar conditions and in similar locations.

a. To the extent that all or a portion of a party's facilities are damaged by the other party, the party causing the damage shall repair and/or replace the damaged facilities at the damaging party's expense. The repair and/or replacement shall meet the standards of the facility's owner and be subject to the review and approval of the party's designated representative.

~~38-39.~~ As technology advances, new components may be added to the *Rapid* route traffic control systems. The Quarterly Standard Performance Checklist, Exhibit "~~D~~C", in this Agreement may be updated, from time to time, following mutual written agreement of the Parties to reflect those changes and by updating Exhibit "~~D~~C" in this Agreement.

~~39-40.~~ The City periodically reviews and may update its minimum insurance requirements. MTS is required to maintain the insurance requirements described in Exhibit "~~E~~D" per this Agreement, subject to approval of different requirements by each Party's Risk Manager on a case-by-case basis. Thirty (30) days prior to any change in its insurance requirements, the City will notify MTS of any changes to its insurance requirements in relation to this Agreement and will update Exhibit "~~E~~D" in this Agreement. MTS may satisfy all or part of the City's insurance requirements through a program of self-insurance.

40.41. The BRT FACILITY is and shall be owned, managed, operated, maintained, and controlled solely by MTS. Except as provided herein, City has no duty, obligation, or responsibility for ownership, operation, maintenance, or control of the BRT FACILITY. Nothing in this provision is intended to alter the storm water facility regulatory responsibilities acknowledged in Section B, Paragraph 9. Nothing in this provision is intended to transfer fee ownership of the City's real property and/or right-of-way to MTS or SANDAG.

41.42. SANDAG and MTS will assume full responsibility for maintenance, liability, repair, protection, replacement and ultimate or interim removal of said DEDICATED GUIDEWAY as specifically set forth herein, unless otherwise agreed upon by the City, SANDAG and MTS

42.43. SANDAG and MTS acknowledge and agree that the communications duct bank within City right-of-way is owned by the City. Conduit(s) and/or fiber optic cable(s), within the communications duct bank, are designated for exclusive use by the Parties as assigned in the Project's as-built construction plans for the duration of this Agreement.

43.44. The Parties shall be responsible for the maintenance, management, and use of their respective communication system conduit(s), fiber optic cable(s), and communications equipment along the *Rapid* route.

45. The Parties acknowledge that MTS and SANDAG have entered into a separate joint use and maintenance agreement with the California Department of Transportation (CalTrans) regarding the SR-125 bridge overcrossing, MTS Doc. No. G1842.0-16/SANDAG Agreement No. 5003148/CalTrans Agreement No. 11-8411 (CalTrans JUMA). Nothing in this Agreement is intended to alter either MTS or SANDAG's obligations and rights under the CalTrans JUMA. The Parties acknowledge that modifications of the CalTrans JUMA may necessitate revisions to this Agreement pursuant to Paragraph 37. The Parties agree that consent for such revisions shall not be unreasonably withheld, conditioned, or delayed.

44.46. City reserves its right to use the DEDICATED GUIDEWAY, SR-125 bridge overcrossing, and/or stations within the City right-of-way for future construction, reconstruction, expansion, modification, or maintenance purposes without restriction or reimbursement to any party should MTS cease operation of the DEDICATED GUIDEWAY pursuant to Paragraph 36, subject to any necessary approvals from CalTrans.

45.47. This Agreement shall be effective upon the date of execution of the Agreement by MTS, SANDAG, and City. Each party will pay its costs of allocated maintenance responsibility as identified herein and no payments are due to City, SANDAG, or MTS by any other, except as noted in this Agreement. That unless it is amended by the Parties in writing, this Agreement is effective for the life of *TransNet* upon execution by all Parties but subject to termination upon a minimum of a 12 months written notice by any Party and automatically upon termination of legislative or administrative authorization of the Program by any state or federal government agency.

~~46.48.~~ No party to this Agreement shall assign any of its rights or responsibilities under this Agreement, nor any part hereof, without the prior written consent of all other parties to this Agreement, which consent shall not be unreasonably withheld, conditioned, or delayed.

~~47.49.~~ Neither City nor any officer, official, director, or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by MTS or SANDAG under or in connection with any work, authority, or jurisdiction delegated to MTS or SANDAG under this Agreement. It is understood and agreed that, pursuant to California Government Code Section 895.4, MTS or SANDAG, as applicable, shall fully defend, indemnify, and save harmless City, and all officers, officials, directors, and employees thereof from all claims, suits, or actions of every name, kind, and description brought for or on account of injury (as defined in California Government Code Section 810.8) occurring by reason of anything done or omitted to be done by MTS or SANDAG under ~~or~~ in connection with any work, authority, or jurisdiction delegated to MTS or SANDAG under this Agreement.

~~48.50.~~ Neither MTS, nor any director, officer, or employee thereof, is responsible for any damage or liability occurring by reason of anything done or omitted to be done by City or SANDAG under or in connection with any work, authority, or jurisdiction delegated to City or SANDAG under this Agreement. It is also understood and agreed that, pursuant to California Government Code Section 895.4, City or SANDAG, as applicable, shall fully defend, indemnify, and save harmless MTS, its directors, officers, and employees from all claims, suits, or actions of every name, kind, and description brought for or on account of injury (as defined in California Government Code Section 810.8) occurring by reason of anything done or omitted to be done by City or SANDAG under or in connection with any work, authority, or jurisdiction delegated to City or SANDAG under this Agreement.

~~49.51.~~ Neither SANDAG, nor any director, officer, or employee thereof, is responsible for any damage or liability occurring by reason of anything done or omitted to be done by City or MTS under or in connection with any work, authority, or jurisdiction delegated to City or MTS under this Agreement. It is also understood and agreed that, pursuant to California Government Code Section 895.4, City or MTS, as applicable, shall fully defend, indemnify, and save harmless SANDAG, its directors, officers, and employees from all claims, suits, or actions of every name, kind, and description brought for or on account of injury (as defined in California Government Code Section 810.8) occurring by reason of anything done or omitted to be done by City or MTS under or in connection with any work, authority, or jurisdiction delegated to City or MTS under this Agreement.

~~50.52.~~ The parties have entered into a separate agreement/ concerning responsibility for the Traffic Signal Operations for the *Rapid* Project entitled Memorandum of Understanding Between the San Diego Association of Governments, the City of Chula Vista, and the Metropolitan Transit System Regarding Rapid Traffic Systems Operations (MTS Doc. No. _____; SANDAG Agreement No. _____; _____; City Agreement No. _____.)

~~51-53.~~ Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this contract or affect the legal liability of either party to the contract by imposing any standard of care different from the standard of care imposed by law.

~~52-54.~~ The parties hereto recognize and agree that separate counterpart signature pages may be used but that all such pages constitute one and the same Agreement.

~~Attachments~~Attachment: Exhibit A Maintenance Agreement Map
Exhibit B List of Traffic Signals

_____ Exhibit C ~~JUMA between the State, SANDAG, and MTS at SR-125~~

_____ ~~Exhibit D~~ City Routine Maintenance Checklist - *Rapid* route traffic control system

Exhibit ~~E~~D City Insurance Requirements

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals the day and year first written above.

CITY OF CHULA VISTA

**SAN DIEGO METROPOLITAN
TRANSIT SYSTEM**

By _____
MARY CASILLAS-SALAS
Mayor

By _____
PAUL C. JABLONSKI
Chief Executive Officer

Approved as to form and Procedure:

Approved as to form:

By _____
GLEN R. GOOGINS
City Attorney

By _____
KAREN LANDERS
General Counsel

**SAN DIEGO ASSOCIATION OF
GOVERNMENTS**

By _____
HASAN IKHRATA
Executive Director

By **JOHN KIRK**
Office of General Counsel